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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 6th May, 2024

No. 13/2/114-HII(2)-2024/7306.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **109/2021** dated **22.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJESH KUMAR S/O SH. HARBANS LAL, H. NO. 5831, MALOYA COMPLEX, NEAR
SICALIGARH GURUDAWARA. (Workman)

AND

M/S ON DOT COURIER & EXPRESS CARGO PVT. LTD., PLOT NO. 27, INDUSTRIAL
AREA, PHASE - II, CHANDIGARH THROUGH ITS MANAGING DIRECTOR. (Management)

AWARD

1. Rajesh Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that on 01.03.2006 the workman was appointed as Operator by the management of M/s On-Dot Courier & Cargo Ltd. Later on the management changes the name of its establishment and started its work under the name & style of M/s On-Dot Courier & Express Cargo Pvt. Ltd. All the staff including the workman started work in the new named establishment with continuity of service and all benefits intact. There was no change in the management, work place, nature of job infrastructure etc. after the change of name of the establishment. The workman was drawing ₹ 9,095/- as wages per month at the time of termination which is less than the minimum rate of wages. On 01.04.2020 as usual the workman went to attend his normal duties but he was refused work by the management without assigning any reason and notice. The refusal of work which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet

(1555)

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was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. The workman is not well versed with the law and on ill advice of someone inadvertently he served upon Mr. K. K. Sharma a demand notice dated 03.06.2020 for his reinstatement and other legal dues. He remained in continuous employment from 01.03.2006 to 31.03.2020. He had worked for more than 240 days preceding the date of termination. For his reinstatement the workman served upon the management a demand notice dated 07.03.2021. The management neither denied the contents of the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the management did not appear before the Conciliation Officer, U.T. Chandigarh on any date fixed for settlement. The workman remained unemployed during the period i.e. from the date of termination to till date. The action of the management in terminating the services of the workman is illegal, wrongful, motivated, against the principle of natural justice and unfair labour practice. Prayer is made that the workman may be reinstated with continuity of service along with full back wages and without any change in his service condition.

3. On notice issued for 01.12.2021 the management was served through Smt. Neeraj. None appeared on behalf of the management despite service. Vide order dated 01.12.2021 the management was proceeded against ex-parte.

4. In ex-parte evidence, workman Rajesh Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A'. On 22.03.2024 Learned Representative for the workman closed ex-parte evidence on behalf of the workman.

5. I have heard the arguments of Learned Representative for the workman and perused the judicial file.

6. In order to prove its case, workman Rajesh Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity.

7. From the evidence led by the workman, it is established that on dated 01.03.2006 the workman joined as Operator with the management of M/s On-Dot Courier and Cargo Ltd., which later on in October 2019 changed its name to M/s On-Dot Courier and Express Cargo Pvt. Ltd. At the time of change of the name of the establishment from M/s On-Dot Courier & Cargo Ltd. to M/s On-Dot Courier & Express Cargo Pvt. Ltd., the establishment remained the same and consequently the workman started working in the new named establishment i.e. M/s On-Dot Courier & Express Cargo Pvt. Ltd. with continuity of service and all the benefits intact. On 01.04.2020 his services were terminated with verbal order by the management without assigning any reason and without issuance of any notice. The workman remained in continuous service of the management from 01.03.2006 to 31.03.2020 and thus completed continuous service of more than 240 days in 12 calendar months preceding termination. Thus, workman fulfils the requirement of Section 25B of the ID Act. Once, the requirement of Section 25B of the ID Act is fulfilled, the management / employer before terminating the services is bound to comply with the conditions precedent for retrenchment as envisaged in Section 25F of the ID Act. By Section 25F of the ID Act a prohibition against retrenchment, until the conditions prescribed by that section are fulfilled is imposed. For better appreciation Section 25F of the ID Act is extracted herein below :-

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

8. The workman has specifically alleged that before termination of his services neither any charge sheet was issued nor any inquiry was held and he was not paid retrenchment compensation at the time of termination. In the present case, despite service of notice none has appeared on behalf of the management to prove compliance of the conditions laid down in Section 25F of the ID Act. The testimony of workman / AW1 has gone un-rebutted and un-challenged as none appeared on behalf of the management to contest the claim statement and preferred to be proceeded against ex-parte. There is no reason to disbelieve the evidence led by the workman.

9. In view of the reasons recorded above, the termination of services of the workman is illegal being in violation of Section 25F of the ID Act and the same is hereby set aside.

10. Workman has specifically pleaded that from the date of termination till date he has remained unemployed.

11. In view of the discussion made above, the workman is held entitled to reinstatement with continuity of service along with 50% back wages. Accordingly, this industrial dispute is ex-parte allowed. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 22.03.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 6th May, 2024

No. 13/2/119-HII(2)-2024/7308.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **41/2020** dated **21.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

AMAN KUMAR S/O SH. RAJMAL, C/O AICCTU CHANDIGARH, 1414/1, SECTOR 30-B, CHANDIGARH. (Workman)

AND

M/S JAECO REBUILDING SYSTEMS PVT. LTD (DIRECTOR/OWNER/PARTNERS/ PROPRIETORS), HEAD OFFICE: SCF NO. 344-345, MOTOR MARKET, MANIMAJRA, CHANDIGARH -160101. NOW PRESENT AT REBUILDING CENTER: PLOT NO. 3, HSIIDC, INDUSTRIAL ESTATE, ALIPUR (BARWALA), DISTRICT PANCHKULA, HARYANA, INDIA. (Management)

AWARD

1. Aman Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the management is a company / establishment and deals in providing distribution of parts/machines and service to the automotive companies. On 16.07.2016, the workman was appointed as Account Executive (Billings & Computer Operating Works). The workman falls within the definition of 'workman' as defined in Section 2(s) of the ID Act. The daily timing of the workman was from 09:00 A.M. to 06:00 P.M. with weekly off. The work of the workman was controlled, supervised and assessed by HR Department of the management. The workman was being paid ₹16,000/- as gross salary in cash. The workman had not been given his salary of June, July and August, 2019 and also not paid bonus of last two financial years. The work and conduct of the workman while in service was unblemished and satisfactory. Neither any charge-sheet was served to him nor any enquiry was conducted against him for any misconduct during whole tenure of his work while he was in service. On 31.08.2019, the workman was told by the owner of management that not to come on the duty from the next day and also to resign from the service otherwise they will terminate him. The work on which the workman was deputed is still going on as the work is a regular work of the industry/establishment of management. The work was doing major part of the work of management. While terminating the services of the workman, the management has utterly violated the various provisions of the ID Act. Neither prior notice was issued to the workman nor he was paid wages in lieu of the notice period. The workman has completed 240 days in the 12 calendar months preceding his termination. The workman has submitted demand notice to the management and before the Assistant Labour Commissioner-cum-Conciliation Officer, Sector 30, Chandigarh and the management did not appear before the Conciliation Officer during all proceedings. No reply or written comments were submitted by management. The Conciliation Officer initiated conciliation proceedings in the matter of industrial dispute raised by the workman but ultimately, the conciliation proceedings failed. Accordingly, the conciliation officer vide letter memo No.940 dated 26.02.2020 advised the workman to refer Section 2A of the ID Act

(Amendment) Act, 2010 and accordingly this claim. Prayer is made that the management may be ordered to reinstate the workman with continuity of service along with full back wages and all the benefits.

3. On notice, Shri Rahul Chaudhary filed authority letter on behalf of the management on dated 19.01.2021. Management contested the claim statement by filing written statement on letter pad of the management on 22.07.2021. Shri Pardeep Chaudhary, Director of the management has filed the written statement, wherein it is stated that workman Aman Kumar (*here-in-after workman*) had been paid his all salaries towards his working in the company as well as all dues which were payable by the company. It is totally wrong and false allegations over the company that the services of the workman are terminated by the company. The workman has left the job without information and notice. Workman has stopped coming to the company's office the day he posted e-mail to the company for his resignation. Due to this act of the workman company had suffered from losses approximately an amount of ₹ 5,00,000/-. This is the reason that the workman is making false and baseless allegations against the company. The workman should be punished according to law of the Court and IPC for false and wrong statement given in the Court against the company and recover amount of ₹5,00,000/- from him due to his act because the company has suffered heavy losses due to his work.

4. Replication not filed. After filing of written statement on 22.07.2021, on the next date 18.08.2021, none appeared on behalf of the management and fresh notice to the management was issued for 20.09.2021. On 20.09.2021, Shri Rahul Chaudhary, Accountant appeared on behalf of the management and case was adjourned to 09.11.2021. On 09.11.2021, none appeared on behalf of the management and vide order dated 09.11.2021, the management was proceeded against ex-parte.

5. In ex-parte evidence, workman Aman Kumar examined himself as AW1 and tendered his affidavit Exhibit AW-1/A along with documents Exhibit 'W1' to Exhibit 'W3'.

Exhibit 'W1' is copy of demand notice dated 09.09.2019 raised before the management through RC with copy to Assistant Labour Commissioner, Chandigarh.

Exhibit 'W2' is original postal receipt dated 09.09.2019.

Exhibit 'W3' is failure report bearing Memo No.940 dated 26.02.2020 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh.

6. Workman examined AW2 Sukhjeet Singh, Clerk O/o Assistant Labour Commissioner, U.T. Chandigarh who brought the summoned record pertaining to M/s Jaeco Rebuilding Systems Pvt. Ltd. Exhibit 'AW2/1' to Exhibit 'AW2/7' (original of all documents were seen and returned).

Exhibit 'AW2/1' is photocopy of annual return filed under the Employees' Compensation Act for the period from 01.01.2016 to 31.12.2019.

Exhibit 'AW2/2' is photocopy of annual return filed under the Payment of Wages Act and Minimum Wages Act for the period from 01.01.2016 to 31.12.2019 (colly. Pages 1 to 17).

Exhibit 'AW2/3' is photocopy of annual return filed under the Factories Act for the period from 01.01.2016 to 31.12.2019.

Exhibit 'AW2/4' is photocopy of renewal of licence under the Factories Act for the year 2017, 2018, 2019 and 2020.

Exhibit 'AW2/5' is photocopy of contribution paid under the Punjab Labour Welfare Fund Act, 1965 along with list of employees for the period from April 2016 to September 2019.

Exhibit 'AW2/6' is photocopy of demand notice dated 09.09.2019 raised by Aman Kumar, workman.

Exhibit 'AW2/7' is copy of failure report bearing Memo No.940 dated 26.02.2020.

7. Workman examined AW3 Jasveer Kaur, Senior Social Security Assistant (SSSA), O/o Regional Provident Fund Commissioner, Sector 17, Chandigarh who produced the record Exhibit 'AW3/1' and Exhibit 'AW3/2' (original of all documents were seen and returned).

Exhibit 'AW3/1' is authority letter in favour of Jasveer Kaur issued by Shri Mohan Singh - Assistant P.F. Commissioner to produce the record of proceedings under Section 7-A of Employees' Provident fund & Miscellaneous Provisions Act, 1952 (EPF Act) in the complaint of complainant Shri Aman Kumar.

Exhibit 'AW3/2' is record pertaining to the complaint filed by Aman Kumar under Section 7-A of EPF Act.

8. On 06.12.2023, Learned Representative for the workman closed ex-parte oral evidence on behalf of the workman and on 21.03.2024 closed ex-parte documentary evidence on behalf of the workman.

9. I have heard arguments of Learned Representative for the workman and perused the judicial file.

10. In order to prove his case, workman Aman Kumar has examined himself as his own witness and vide his affidavit Exhibit 'AW1/A' deposed the averments of the claim statement in toto which are not reproduced here for the sake of brevity. AW1 has supported his oral version with documents Exhibit 'W1' to Exhibit 'W3'. In order to prove the fact that the management is an 'industry' as defined in Section 2(j) of the ID Act, workman has examined AW2 Sukhjeet Singh, Clerk O/o Assistant Labour Commissioner, U.T. Chandigarh who has proved the Annual Returns filed by the management of M/s Jaeco Rebuilding System Pvt. Ltd. under the Employees Compensations Act, Minimum Wages Act and Factories Act for the period w.e.f. 01.01.2016 to 31.12.2019 vide Exhibit 'AW2/1' to Exhibit 'AW2/3' respectively and also proved the renewal of license of the management company under the Factories Act for the year 2017 to 2020 vide Exhibit 'AW2/4' and the contribution paid by the management company under the Punjab Labour Welfare Act, 1965 along with list of employees for the period from April 2016 to September 2019 vide Exhibit 'AW2/5'.

11. In the written statement / reply to the claim statement, the management has not disputed that the workman was employee of the management-company. The plea taken by the workman that on illegal termination of his services by the management, he raised demand notice dated 09.09.2019 and invoked the interference of the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh before whom the conciliation proceedings were failed, stands proved from documents Exhibit 'AW2/6' and Exhibit 'AW2/7' produced on record by AW2 Sukhjeet Singh. AW3 Jasveer Kaur, SSSA, O/o Regional Provident Fund Commissioner, Chandigarh has proved the complaint Exhibit 'AW3/2' filed by workman under Section 7-A of the EPF Act wherein he has alleged that P.F. Deduction is made from his salary but not deposited in P.F. Account.

12. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the workman was appointed as Account Executive with the management on 16.07.2016 on monthly salary of ₹16,745/- to be paid in cash. Undisputedly workman remained in continuous service of the management from the date of his appointment up to 31.08.2019 when his services were terminated with verbal order by the management. The workman is proved to have completed continuous period of more than 240 days of service in 12 calendar months preceding termination. Thus, workman fulfills the requirement of Section 25B of the ID Act. Once it is established that the workman fulfills the requirement of Section 25B of the ID Act, the provisions of Section 25F of the ID Act is attracted. Section 25-F of the ID Act is extracted here-in-below :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

- (b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

13. In the present case, the management in the written statement did not take any plea that before termination of services of the workman, the conditions precedent for retrenchment of an employee as provided in Section 25F of the ID Act were complied with. The management in the written statement has taken the plea that the workman has resigned by posting e-mail message and left the job. The aforesaid plea taken by the management does not stand proved as the management has not led any oral or documentary evidence to support its plea rather preferred to be proceeded against ex-parte. Non-appearance of anyone in the witness box on behalf of the management raises strong presumption against the management. Consequently, it is proved on record that the management has terminated the services of the workman in violation of Section 25F of the ID Act. The evidence led by the workman has gone un-rebutted and un-challenged as despite appearance through Authorised Representative as well as its Accountant, the management though filed the written statement but did not bother to pursue the case and preferred to be proceeded against ex-parte. There is no reason to disbelieve the evidence led by the workman.

14. In view of the discussion made above, the verbal order dated 31.08.2019 of termination of services of the workman, being violative to Section 25F of the ID Act, is illegal and hereby set aside. The workman has not pleaded that he was not gainfully employed after the date of termination of his services. Therefore, workman is held entitled to reinstatement with continuity of service and 25% back wages. Accordingly, this industrial dispute is ex-parte allowed. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 21.03.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 6th May, 2024

No. 13.2.97-HII(2)-2024/7310.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **3/2021** dated **16.02.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MUKESH RANI, H.NO.2497/1, SECTOR 38-C, CHANDIGARH (Workman)

AND

M/S J.S. PEST CONTROL, SCO NO.393, TOP FLOOR, SECTOR 37-D, CHANDIGARH
THROUGH ITS PARTNER/ PROPRIETOR. (Management)

AWARD

1. Mukesh Rani, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Supervisor by the management on 28.02.2021. The workman remained in un-interrupted employment up to 17.05.2018, when her services were illegally and wrongfully terminated by refusing of work. The workman was drawing ₹14,000/- per month as wages at the time of termination. On 17.05.2018, the management informed the workman that her services are no more required by the management. When the workman asked for the reasons of termination, the management refused to tell the reason. The workman was deployed at PGI Chandigarh at the time of termination. Although the workman was verbally designated as Supervisor but she had no supervisory, administrative or managerial duties to discharge. Her job was of clerical nature. The workman used to demand bonus almost daily from the management but the management denied bonus to her on one pretext or the other, this could be the cause of termination. The workman is legally entitled to receive bonus from the date of her appointment. The refusal of work, which amounts to termination is retrenchment under Section 2(oo) of the ID Act. The management has also violated Section 25F of the ID Act. No charge sheet was issued, no inquiry was held and the workman was not paid retrenchment compensation at the time of termination. Violation of the same makes the termination void. For her reinstatement, the workman served upon the management a demand notice dated 06.06.2018. The management neither replied the demand notice nor took the workman back on duty. The Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh was requested for his intervention. The Conciliation Officer intervened but the dispute could not be settled within the stipulated period. The action of termination is illegal, wrongful, motivated, against the principles of natural justice and unfair labour practice. The workman remained unemployed during the period i.e. from the date of termination till date. Prayer is made that the workman may be reinstated continuity of service along with full back wages and consequential benefits without any change in her service condition.

3. On notice, management contested the claim statement by filing written statement on 16.02.2021 wherein it is submitted that services of the applicant (here-in workman) had never been terminated by the management, rather the applicant herself abandoned the services and did not report for duty after 17.05.2018. The applicant had been working with the management since 01.04.2011 and she had been deputed to supervise the work in the PGI. The applicant had worked with the management till 17.05.2018, when she had left the

organisation without any intimation and authority. During the services rendered by the applicant with the management, reputation and image of the management had put on stake by her due to her careless act & conduct and not adhering to the working principles of the management. Various complaints have been received by the management regarding the poor working attitude in the PGI where the management was doing the allotted work. Certain complaints / letters are written by the authorities of the PGI including complaint dated 09.06.2014, 10.06.2014 and 11.06.2014. Because of these complaints, the management had faced problem in getting the work from the PGI authorities. Thus, the management had suffered financially as also the reputation of the management had been put to stake by the inaction on part of the applicant. Thus, the applicant had also filed the civil suit before the Learned Civil Court seeking damages which is still pending. This fact has been concealed by the applicant here. The present statement of claim has been filed during the pendency of the civil suit. Thus, the applicant is guilty of concealment of material facts from this Court. While on the rolls of the management, the applicant had opened a company / firm in the name of M/s RR Pest Control and got the work done through the staff of the management as also by using the chemical and equipment of the management and that was the sole reason that the applicant had given weightage to her company instead of the work allotted to her by the management. The warning had been given to the applicant and she has assured the management in writing in the month of June, 2015 that she will not repeat the same thing in future. Copy of the visiting card of the applicant and undertaking given by the applicant are enclosed with the written statement. Despite undertaking / assurance the applicant did not stop operating her company and that has seriously affected the financial interest of the management besides maligning the reputation of the management. Due to the careless and negligent attitude towards the assignment, the clients of the management started complaining the management and further the management had suffered a lot in the institution where the management had worked, had deducted the amount in the form of penalties from the bills raised by the management and thus the management had suffered financial loss. Warning had also been given to the applicant by the management to mend her ways vide letter dated 06.01.2018 and 22.03.2018. The applicant had worked with the management till 17.05.2018 when she had left the organisation without any intimation and authority. Therefore, instead of approaching the management, applicant filed a demand notice before the Conciliation Officer, U.T. Chandigarh but the same had been filed by the authority. Thereafter, the workman had filed a claim case for bonus which has been dismissed by this Court. The management had served the legal notice dated 20.07.2018 followed by reminder dated 12.04.2019. The notice dated 12.04.2019 has been refused by the applicant as per the remarks of the postal authorities dated 20.04.2019. The applicant is not a workman as per the definition of 'workman' under the ID Act and the applicant was doing the supervisory, administrative and managerial duties. It is wrong to allege that job of the applicant was of clerical nature. The bonus case filed by the applicant has already been dismissed by this Court. No amount is due towards the applicant. The management has not violated the provisions of the ID Act. The management had submitted reply to the demand notice. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be rejected and the reference may be answered in favour of the management and against the applicant.

4. The workman filed rejoinder wherein the contents of the written statement except admitted facts, are denied as wrong and averments of claim statement are reiterated.

5. From the pleadings of the parties, following issues were framed vide order dated 19.04.2022 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Relief.

6. In evidence, workman Mukesh Rani examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A'. On 10.05.2023 workman closed her evidence in affirmative.

7. On the other hand, management examined Rajat Oberio - Senior Executive, M/s J. S. Pest Control as MW1, who tendered his affidavit Exhibit 'MW1/A' along with copies of documents Mark 'A' to Mark 'G'.

Mark 'A' is letter dated 09.06.2014 issued by the Sanitary Inspector, PGIMER, Chandigarh to the Additional Medical Superintendent, APC, PGIMER, Chandigarh.

Mark 'B' is office noting dated 10.06.2014 written by the Sanitary Inspector, APC, PGIMER, Chandigarh.

Mark 'C' is letter / reminder dated 11.06.2014 issued by the Sanitary Inspector, PGIMER, Chandigarh to the Senior Sanitation Officer, PGIMER, Chandigarh.

Mark 'D' is visiting card of R.R. Pest Control.

Mark 'E' is letter dated 09.06.2015 written by the workman Mukesh Raina to the management company.

Mark 'F' is letter dated 06.01.2018 issued by the management company to the workman Mukesh Raina.

Mark 'G' is the letter dated 22.03.2018 issued by the management company to the workman Mukesh Raina.

8. During cross-examination of AW1 the management had put apology letter **Exhibit 'MX/1'**. On dated 20.12.2023 Learned Representative for management closed oral evidence. On 16.02.2024 Learned Representative for management closed documentary evidence.

9. I have heard the arguments of Learned Representatives for the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

10. Onus to prove this issue was on the workman.

11. Under this issue, workman examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto which are not reproduced here for the sake of brevity.

12. On the other hand, management examined MW1 Rajat Oberio - Senior Executive, M/s J. S. Pest Control, who vide his affidavit Exhibit 'MW1/A' deposed that he reiterates the contents made in the written statement which may be read as part of his affidavit. He is authorised to file the present affidavit on behalf of the firm and thus, he is fully competent to state the facts in the evidence of the management. The applicant is not a workman as per the definition of the 'workman' under the ID Act as the applicant was doing the supervisory, administrative and managerial duties. The employees of the respondent, who were allocated the duty of doing the pest control work in the PGI and had been attached to her and had been reporting to the applicant. The applicant was having the administrative and supervisory control over that. The applicant had never been terminated by the respondent-management rather the applicant had herself left her job of her own. It is denied that management has violated the provisions of the ID Act. The applicant had herself abandoned the services and did not report for duty after 17.05.2018. The applicant had worked with the management from 01.04.2011 and she had been deputed to supervise the work in the PGI. The applicant had worked with the management till 17.05.2018 when she left the organisation without any intimation and authority. During the service rendered by the applicant with the management, the reputation and image of the management had been put on stake by her due to her careless act and conduct and not adhering to working principles of the management. Various complaints had been received by the management regarding the poor working attitude in the PGI where the management was doing the allotted work. Copies of certain complaints / letters had been written by the authorities of the PGI including letter dated 09.06.2014 (tendered along with the affidavit vide Mark 'A'), letter dated 10.06.2014 (tendered along with the affidavit vide Mark 'B') and letter dated 11.06.2014 tendered along with the affidavit vide Mark 'C'). Because of these complaints the management had faced problem in getting the work from the PGI authorities and thus, the management had suffered financially as also the reputation of the management had been put on stake by the inaction on part of the applicant. Thus, the

applicant had also filed the civil suit before Learned Civil Court seeking damages from the applicant, which is still pending and this fact has been concealed by the applicant here. Thus, the applicant is guilty of concealment of material facts. While on the rolls of the management, the applicant had opened a company / firm in the name of M/s RR Pest Control and got the work done through the staff of the management as also by using the chemical and equipment of the management and that was the sole reason that the applicant had given weightage to her company instead of the work allotted to her by the management. The warning had been given to the applicant and she has assured the management in writing in the month of June, 2015 that she will not repeat the same thing in future. Copy of the visiting card of the applicant (tendered into evidence vide Mark 'D') and undertaking given by the applicant (tendered into evidence vide Mark 'E'). Despite undertaking / assurance, the applicant did not stop operating her company and that has seriously affected the financial interest of the management besides maligning the reputation of the management. Due to the careless and negligent attitude towards the assignment, the clients of the management started complaining the management and further the management had suffered a lot in the institution where the management had worked, had deducted the amount in the form of penalties from the bills raised by the management and thus the management had suffered financial loss. Warning had also been given to the applicant by the management to mend her ways vide letter dated 06.01.2018 (tendered into evidence vide Mark 'F') and 22.03.2018 (tendered into evidence vide Mark 'G'). The applicant had worked with the management till 17.05.2018 when she had left the organisation without any intimation and authority and thus abandoned the services. The deponent has not violated any provisions of the ID Act and the applicant is not entitled to any relief claimed by her. The applicant is not unemployed rather she is doing the work of Boutique at her residence and had been earned handsomely. It is pertinent to mention here that in affidavit Exhibit 'MW1/A', MW1 has mentioned Exhibit 'R1' to Exhibit 'R7' but the said documents are tendered into evidence vide Mark 'A' to Mark 'G' respectively as the original documents were not produced.

13. From the oral as well as documentary evidence led by the parties, it comes out that the workman was appointed as Supervisor by the management on 28.02.2011. From the date of appointment up to 17.05.2018, the workman remained in continue service of the management. In this manner, the workman has completed continue service of more than 240 days in twelve calendar months preceding termination of her services. Therefore, the workman fulfils the requirement of Section 25B of the ID Act.

14. The management has alleged that the workman was discharging supervisory, administrative and managerial duties. She was having administrative and supervisory control over the employees who were attached to her and who had been reporting to her. Learned Representative for the management referred cross-examination of AW1 wherein she stated that she has joined with the management w.e.f. 01.03.2011 as Supervisor. She has been deputed to work at PGI. She used to do supervision of the workman and maintain the work done sheet. On the other hand, the workman has specifically pleaded that she was verbally designated as Supervisor. She had no supervisory, administrative or managerial duties to discharge. Her job was of clerical nature. The law is settled by the Hon'ble Supreme Court that for determining the question as to whether a person employed in an industry is a workman or not, not only the nature of work but terms of appointment and job performed are relevant. Supervision contemplates direction and control. An undue important need not to be given to the designation. What are the prime duties, he performs is to be seen. It is necessary to be proved that there were some persons working under him whose work is required to be supervised. In the present case, MW1 when put to cross-examination admitted as correct that Mukesh Rani was not competent to promote or demote any employee of the management. MW1 admitted as correct that Mukesh Rani was not competent to issue charge sheet to any employees of the management. MW1 admitted as correct that Mukesh Rani was not competent to sanction leave to any of the employees of the management. MW1 further stated that management has not issued any letter to Mukesh Rani to perform supervisory, managerial and administrative functions. The volunteer statement of MW1 that she was verbally told to supervise the pest control work at PGI, Chandigarh is not substantiated with any evidence. The judgment referred by Learned Representative for the workman reported in **2006 SCC (L&S) 1486** titled as **Anand Regional Cooperative Oil Seedgrowers' Union Limited Versus Shailesh Kumar Harshadbhai Shah**, is applicable to the facts of the present case to

an extent wherein Hon'ble Supreme Court of India has held that the primary duties performed by an employee are more important to ascertain whether he is a 'workman' or not and the designation of the employee or the name assigned to his class should be given undue importance and merely existence of subordinates whose work is required to be supervised is a sine-qua-non to prove supervisory work and the employee must have authority to initiate departmental proceedings against the subordinates. In view of the above referred judgment of Hon'ble Supreme Court, the workman in the present case falls within the definition of 'workman' as defined in Section 2(s) of the ID Act.

15. Learned Representative for the workman argued that on 17.05.2018 the management terminated the services of the workman by refusing of work. The workman had been demanding bonus almost daily for the management but the management denied bonus to her on one pretext or other. This could be the cause of termination of services of the workman. Moreover, at the time of termination of services, the management neither issued any charge sheet nor held any domestic inquiry nor paid retrenchment compensation. Thus, the termination of services of the workman by verbal order is retrenchment under Section 2(oo) of ID Act and is violation of Section 25F of the ID Act. On the other hand, Learned Representative for the management argued that the workman while on the rolls of the management, opened a company / firm in the name of M/s R. R. Control and got the work done through the staff of the management and also by using the chemical and equipment of the management. The workman had given weightage and priority to her M/s R. R. Pest Control instead of the work allotted to her by the management due to which the management had to suffer financial loss and reputation of the management also lowered. After dated 17.05.2008 the workman had abandoned the services and did not rejoin with the management. To support his arguments Learned Representative for management referred cross-examination of AW1 wherein she identified her signatures at point 'A' of Exhibit 'MX1'. AW1 admitted as correct that there is civil suit pending against her. In that civil suit the allegations have been levelled against her by the management that her work & conduct was not satisfactory and due to which the company had suffered financial loss. Learned Representative for the management also referred copy of visiting card Mark 'D' and laid much stress on the fact that the workman was running her own company under the name & style of R. R. Pest Control. To my opinion, as far as visiting card Mark 'D' showing the name R. R. Pest Control, H.No.2496/1, Sector 38-C, Chandigarh, [email r.r.pestcontrol@yahoo.in](mailto:r.r.pestcontrol@yahoo.in) is concerned, the management has failed to prove that the workman has got published this visiting card. MW1 in his cross-examination admitted as correct that the management has the record of residential address and mobile contact number of all its employees. The aforesaid version of MW1 would support the plea of the workman that anyone having knowledge of her residential address and mobile contact number could get published visiting card mentioning the details of her residential address, contact number and email id. etc. AW1 in her cross-examination denied the suggestion as wrong that she had opened the e-mail id. under the name id. r.r.pestcontrol@yahoo.in. The management has failed to prove that the workman is user of the aforesaid e-mail id. As far as apology letter Exhibit 'MX/1' is concerned AW1, in her cross-examination admitted her signature at point 'A' of the letter. The date written on Exhibit 'MX/1' is not legible, though readable as 9.6.15. The contents of apology letter addressed from Mukesh Raina to Chief Executive J. S. Pest Control, SCO 393, Sector 37-D, Chandigarh, are as below :-

"Sir

I, Mukesh Raina, w/o Sh.Santosh Raina r/o H.No.2496/1, Sector 38C hereby admit that I opened a pest control firm in the name of M/s R.R. Pest Control while working in your firm. I admit that this is a mistake and I will not repeat this at in future.

Please accept my apology. If I repeat this in future, any legal action as per law may be taken against me.

Thanking you

Yours faithfully

Sd/-

(Mukesh Raina)"

16. Even if it is assumed that the workman admitted her mistake vide apology letter Exhibit 'MX/1', in that situation also it is neither pleaded nor proved into evidence by the management that after dated 09.06.2015 the workman repeated her mistake. The services of the workman were not terminated on the basis of apology letter dated 09.06.2015 but much later on 17.05.2018. Thus, Exhibit 'MX/1' is not proved to be the basis of termination of service of the workman.

17. Learned Representative for the management has argued that the workman has concealed the material fact that the litigation between the parties is pending in Civil Court. To support his arguments Learned Representative for the Management referred cross-examination of AW1 wherein she has admitted as correct that there is Civil Suit pending against her. AW1 in her cross-examination further stated that in that civil suit the allegations have been levelled against her by the management that her work & conduct was not satisfactory and due to which the company had suffered financial loss. To my opinion, from the aforesaid version of AW1 it is proved that some civil litigation is pending between the parties but the management did not place on record the copy of pleadings of the said civil litigation and also not disclosed the particulars such as civil suit number, CNR number, CIS number, title of the case, name of the Court where the matter is pending, the next date of hearing of the said case. In the absence of aforesaid documents / particulars, no opinion can be formed as to whether the pleadings of that case are material for the purpose of the adjudication of present industrial dispute reference. The plea of the management that the workman used to get the work done through the staff of the management and by using the chemical and equipment of the management does not stand proved for the reason that the management did not examine any of its official or employee through whom the workman got done her private work. No document is proved into evidence by the management showing use of any chemical or equipment of the management by the workman for her personal / private use. The management has also not proved into evidence the balance sheet of the management firm showing any financial loss on account of act & conduct of the workman.

18. Though it is not proved on record that the workman has abandoned the job but, if for the sake of argument it is assumed that after dated 17.05.2018 the workman did not turn up to join her duties with the management, in that situation also at the most it amounts to misconduct on the part of the workman. The management was duty bound to take disciplinary action against the alleged misconduct of the workman. In this case, the management has not issued any letter to the workman requiring her to join duty and did not take any kind of disciplinary action against her by issuing notice, memo or charge sheet. MW1 in his cross-examination stated that after 17.05.2018 the management did not issue any letter to the workman that she has abandoned her services. The management was aware of the residential address of the workman. The complaints Mark 'A' to Mark 'C' and the warning letters Mark 'F' and Mark 'G' are not sufficiently proved into evidence as the original of the same was not produced. As discussed above, the workman fulfils the requirement of Section 25B of the ID Act, therefore, the management is bound to comply with the conditions incorporated in Section 25F of the ID Act. It neither pleaded nor proved into evidence that the management has complied with the conditions laid down in Section 25F of the ID Act.

19. In view of the reasons recorded above, the management has failed to prove that the workman has abandoned the job. The management is proved to have terminated the services of the workman w.e.f. 17.05.2018 in violation to Section 25F of the ID Act. Consequently, termination of services of the workman is illegal and hereby set aside.

20. It is argued by Learned Representative for the management that the grant of back wages is not the automatic outcome of setting aside order of termination. Initial burden is upon the workman / employee to prove that he remained un-employed during the interregnum period. Once the onus is discharged by the workman / employee, only then the burden shift upon the management/employer to prove that the workman was gainfully employed during the interregnum period. It is further argued by Learned Representative for the workman that in the present case, the workman / AW1 in her examination-in-chief did not state that she was unemployed from the date of termination of her services till date. In the absence of the said evidence, the workman is not entitled to the back wages. To support his arguments Learned Representative for the management

referred the *judgment dated 02.12.2008 of Hon'ble Supreme Court of India passed in Civil Appeal No.7011 of 2008 (arising out of SLP (C) No.21254 of 2017)* titled as *Novartis India Ltd. Versus State of West Bengal and Others*, wherein the Hon'ble Supreme Court in para 23 has discussed the judgment reported in *(2005)5 SCC 124* titled as *Allahabad Jal Sansthan Versus Daya Shanker Rai & Another*. Para 23 of judgment dated 02.12.2008 (*supra*) is reproduced as below :-

"23. In Allahabad Jal Sansthan v. Daya Shankar Rai and another, [(2005)5 SCC 124] it was held :-

"6. A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that Respondent 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24-1-1987. Respondent 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27-2-2001."

It was furthermore observed:-

"16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at."

21. On the other hand, Learned Representative for the workman argued that the workman in para 8 of the claim statement has specifically pleaded that she remained un-employed during the period i.e. from the date of termination to till date. The management simply denied the contents of para 8 as wrong and did not take the plea of gainful employment. Moreover, the management during its evidence has failed to prove that the workman was gainfully employed during the interregnum period. Therefore, the workman is entitled to full back wages.

22. To my opinion, the argument advanced by Learned Representative for the management that the workman has not discharged the initial onus that she continued to remain un-employed from the date of termination, is devoid of merits, in view of the fact that the workman in the claim statement has pleaded that she remained unemployed during the period that is from the date of termination to till date. In the absence of management's plea of gainful employment, it is insignificant that the workman did not depose in her examination-in-chief by way of affidavit that she continued to remain un-employed. The judgment dated 02.12.2008 (*supra*) referred by the Learned Representative for the management is well recognised by this Court but the ratio of the ruling is not applicable to the facts of the present case because in the present case the workman has raised the pleadings that she remained un-employed from the date of termination till date. The judgment dated 12.08.2013

of Hon'ble Supreme Court referred by Learned Representative for the workman in *Civil Appeal No.6767 of 2013 (arising out of SLP (C) No.6778 of 2012)* titled as *Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & others*, which is applicable to the facts of the present case to an extent, the Divisional Bench of Hon'ble Supreme Court while analysing the earlier three-Judge bench decisions gave an authoritative ruling on the issue of "gainful employment". The Hon'ble Supreme Court observed that Ordinarily, an employee or workman whose services are terminated and whose is desirous of getting back wages is required either plead or at least make a statement that he / she was not gainfully employed or was employed on lesser wages. In the present case, as discussed above, the workman has specifically pleaded in the claim statement that claimant workman remained un-employed during the period i.e. from the date of termination to till date. The management during examination in chief of MW1 pleaded that workman is not un-employed rather she is doing of the work of boutique at her residence and had been earning handsomely. The aforesaid version of MW1 is beyond pleadings. It is settled law that evidence beyond pleadings is not admissible. Moreover, the aforesaid version of MW1 does not stand proved as MW1 in his cross-examination stated that he does not know if claimant is running a beauty parlour in her village. So far gainful employment is concerned, any income arising independent of any employment cannot be computed while deciding the issue of gainful employment. In the present case, the management has failed to prove adequate remuneration out of employment received by the workman during the interregnum period. Any other amount received or earned by the workman by using his / her personal skill or experience or doing the labour work and miscellaneous work cannot be considered to be the gainful employment. It is not the case of the management that the workman is employed in any establishment during such period and is receiving adequate remuneration during any such period and the part thereof. Consequently, the management has failed to prove that the workman is gainfully employed. In view of the facts & circumstances of the case, the workman is held entitled to 75% back wages.

23. Accordingly, this issue is decided in favour of the workman and against the management.

Relief :

24. In the view of foregoing finding on the issue above, this industrial dispute is allowed. The workman is held entitled to reinstatement with continuity of service and 75% back wages. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till its actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)

PRESIDING OFFICER,

Industrial Tribunal & Labour Court,

Union Territory, Chandigarh.

UID No. PB0152.

Dated : 16.02.2024.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 6th May, 2024

No. 13/2/109-HII(2)-2024/7312.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **18/2023** dated **09.03.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJAN KUMAR, AGED 25 YEARS, S/O SH. VARINDER PARSAD, R/O HOUSE NO.362, VILLAGE DARYA, UNION TERRITORY CHANDIGARH. (Workman)

AND

1. THE CHANDIGARH ADMINISTRATION, THROUGH THE COMMISSIONER, MUNICIPAL CORPORATION, CHANDIGARH SECTOR 17, UNION TERRITORY CHANDIGARH.
2. PROPRIETOR/PARTNER/MANAGER, M/S INDIAN ENGINEERING EARTH MOVERS WORK, MRF-CUM-GARBAGE TRANSFER STATION, INDUSTRIAL AREA PHASE - 1, UNION TERRITORY CHANDIGARH. (Management)

AWARD

1. Rajan Kumar, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the Chandigarh Administration, through the Commissioner, Municipal Corporation, Chandigarh (*here-in-after management No.1*) is the principal employer and the Proprietor / Partner / Manager, M/s Indian Engineering Earth Movers Work (*here-in-after management No. 2*) is the contractor of the management No.1. The management No.2 selected the workman and appointed as Machine Operator, in the Health Department of the Municipal Corporation, Chandigarh. The workman joined the services of managements w.e.f. 01.03.2021 and worked continuously without any break or interruption in the services till 04.07.2022, when the management No.2 told that his workers are going on strike to demand increased wage rates for the workers, from the Municipal Corporation. It was further told that when the rates will be settled, the workman will be called for duty. At the time of his appointment, the workman was not issued appointment and designation letter. He was neither issued identity card nor issued attendance card. The managements for the initial months of his services used to pay the earned wages by cash and from the month of December 2021 started paying earned wages. The workman worked as Machine Operator at the Garbage Transfer Centre in Industrial Area Phase-1, which is adjoining the CTU Depot No.1 from 8:00 AM to 4:00 PM in general shift. The workman was operating power press machine, which is used for compressing the garbage after the collection and segregation and the compressed garbage is transferred to other centre for further processing. At the time of his retrenchment, he was drawing wages @ ₹ 10,000/- (Rupees Ten Thousands) per month. The workman had completed more than 240 days of his duties/working in

the calendar year. The management No. 1 and 2 were indulging in unfair labour practices on the following grounds :-

- (i) The payment of Minimum rates of wages fixed by the Labour Department, Chandigarh Administration was not implemented.
- (ii) No wage slips were issued to the workman and other workers.
- (iii) The workers working on machines and vehicles are not covered under ESIC in violation of labour laws.
- (iv) The workers were neither issued appointment letters, nor are issued Identity cards and attendance cards.
- (v) The workers are not paid earned wages on pay day etc. etc.

The workman and other workers were raising the issue of implementation of labour laws and the managements were biased against all such workers and used to threaten them for their termination from the services. The workman performed his duties up to the entire satisfaction of managements and his superiors and he was never issued any show cause notice, warning, charge sheet or any other memo to question his work & conduct throughout his actual service period of more than 01 years and 04 months. At present the management No.2 had deployed workers at various places under the control of management No.1 in the Union Territory, Chandigarh. The workman was not enrolled under ESIC whereas he is Machine Operator but he was enrolled under the Provident Fund Scheme. The workman's share was deducted from the earned wages of the workman and the same was deposited with the Provident Fund Office. The deductions of employers share were also made from his earned wages of workman. After a couple of days on 04.07.2022 (the date on which the workman was advised to stay at home), the workman came to know that there is no strike of work and the work is going on, he went to the office to know about his duty. The peon in the office did not allow the workman to meet the Official Incharge, but told the workman to pay ₹ 30,000/- for joining duty as regular workman, otherwise there is no job for him. At the time of verbal refusal of duty to the workman, his junior workers were retained in the services and the services of the workman were retrenched to adjust some one near and dear to the management's high officials. The services of the workman were directly under the control of management No. 1 and its employee Sh. Kulbir Sura is the Incharge of the workshop. The management No.1 used to shift the amount of earned wages of the workers in the account of management No.2 and then payment of salary/ earned wages of the workman were paid to the workman from the account of the Contractor / management No.2. After the retrenchment / termination of services, the workman raised the Demand Notice dated 16.09.2022 under Section 2A of the Industrial Disputes Act, 1947, as amended up to date and the copy of the same was sent to the managements through Registered Post with Acknowledgment due. As the workman received no response from the managements, he submitted a set of five copies of Demand Notice along with an authority letter before the Assistant Labour Commissioner-cum-Conciliation Officer, UT, Chandigarh, who summoned the managements and held the conciliation proceedings, but the proceedings remained unsuccessful. Prayer is made that the workman may be reinstated with continuity of services, full back wages and along with all other service benefits applicable from time to time.

3. On notice, the management No.1 appeared through its authorized Representative and contested the claim of the workman by filing written statement on 20.04.2023, wherein preliminary objections are raised on the ground that the workman has not approached this Court with clean hands and has suppressed the true and material facts of the case and as such the present notice be dismissed on this ground only. The workman/ applicant in the present demand notice is not an employee of the answering management and hence the present demand notice against qua the answering management be dismissed on this ground only. There is no industrial dispute existing between workman and answering management as the essential condition of person being a workman as provided in Section 2(s) of the ID Act is that "There must be an employment of his by the

employer and there must be a relationship between employer and him as a employer and an employee or master and servant" which clearly lapse in the present case and therefore, the claimed petition needs to be dismissed qua the answering management. The workman was neither appointed nor terminated by the answering management. Further, the workman/applicant was employed by the management No.2 and under direct control and supervision of management No.2 and salary to him was also paid by the management No.2, therefore, the question of violation of section 25(F) of the ID Act does not arise qua the answering management as no industrial dispute exists between the workman and answering respondent.

4. On merits, it is stated that management No.2 is the contractor of the answering management under a written contract. The workman never worked for the office of the answering management. The answering management never issued any identification card to the workman. The payments made in his account were made by the management No.2 and not by the answering management. The answering management never transferred the workman to any place. The answering management is no way responsible for the terms & conditions on which the workman was employed with management No. 2. The workman never approached the answering management's office. The answering management never paid any salary to the workman and neither the answering management deducted any amount for the provident fund and ESIC. Remaining averments of the claim of the workman were denied. It is prayed that the claim of the workman qua management No.1 be dismissed.

5. On notice, the management No.1 appeared through its authorized Representative and contested the claim of the workman by filing written statement on 12.07.2023, wherein preliminary objections are raised on the ground that the workman has not approached this Court with clean hands and has suppressed the true and material facts. The answering management is a small contractor, based in Indore. The answering management was hired by M/s Hyva (India) Pvt. Ltd. (therein mentioned as Hyva) as a sub-contractor, for a specific work of operating a Garbage plant in Industrial Area Phase 1, Chandigarh, for a specific period of time. The above said specific work was a part of the Smart City project of management No. 1, for which there was a written agreement between management No.1 and M/s Hyva (India) Pvt. Ltd. However, answering management was not a party to that above said agreement. There was no written agreement between the answering management and M/s Hyva (India) Pvt. Ltd. for above said work of operating a plant. The time period for which the answering respondent was hired by Hyva was 3 months, starting from the date 22.07.2021, which was extended till June, 2022. Thereafter, the work of the project ended by management No.1. The management No.1 stopped payments to Hyva, in result to which the payments of the answering management were stopped by Hyva, and the operation of the plant was taken over by management No.1 in its hands. The management No.1 is the primary employer, who hired Hyva, who then hired answering management No.2 for this project. The answering management had employed the present workman as a casual labour for above said specific work on dated 22.07.2021, initially for a period of 3 months on a fixed salary of ₹ 10,000/- per month. However, due to the extension of the time period of the above said work, the present workman worked with the answering management till June, 2022, for 11 months. Thereafter, the management No. 1 stopped payments of primary contractor Hyva, who then stopped payments of answering management. The workman was employed by the management respondent for a specific period of time for 3 months, thus, the question of retrenchment, termination of the present workman under the ID Act does not arise *per se*. After completion of project and stipulated time, the disengagement of the workman cannot said to be retrenchment under Section 2(oo)(bb) of the ID Act. The answering management cleared salary and all dues of the workman till June, 2022 and nothing has been due of the workman towards the answering management.

6. In reply was reply, it is stated that the answering management has not retrenched / terminated the workman. It is admitted that management No.1 is the principal employer and answering management employed the workman as casual labour for a specific project and specific period of time of 3 months. The answering management is not the sub-contractor of management No.1. Further averments made in the preliminary objections are reiterated. Remaining averments of the claim statement are denied. Prayer is made that the claim of the workman qua answering management may be dismissed.

7. On 08.02.2024, the workman got recorded his statement, which is reproduced as below :-

"Stated that I have filed application seeking to correct my name from Ranjan Kumar to Rajan Kumar being incorrectly spelled. Application is accompanied with photocopy of my adhaar card. The application may be considered and allowed.

I have settled my dispute with M/s Indian Engineering Earth Movers Work i.e. management No.1. My original sworn in affidavit dated Nil regarding settlement with management No.2, attested by Notary Public on 07.02.2024 is Exhibit 'CX'. In pursuance of compromise today I have received cheque No.000184 dated 02.02.2024 for ₹ 25,000/- of Bank of Baroda, M. G. Road, Indore Branch, Indore issued by management No.2 in my favour towards full & final settlement my claim. Copy of the cheque is Mark 'C1'. Now I have no claim whatsoever including right of reinstatement against management No.1 & 2. The claim statement may be disposed off being settled in the Lok Adalat."

8. Statement of the workman is countersigned by his Representative.

9. Heard. In view of the aforesaid statement of the workman, the present industrial dispute is disposed off as settled by way of compromise. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Dated : 09.03.2024.

Secretary Labour,
Chandigarh Administration.

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